

Senate Bill No. 1443

Passed the Senate August 6, 1998

Secretary of the Senate

Passed the Assembly July 7, 1998

Chief Clerk of the Assembly

This bill was received by the Governor this ____ day
of _____, 1998, at ____ o'clock __M.

Private Secretary of the Governor

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CHAPTER ____

An act to amend Section 1368 of, and to amend, repeal, and add Section 1368.02 of, the Health and Safety Code, relating to health care service plans.

LEGISLATIVE COUNSEL'S DIGEST

SB 1443, Knight. Health care service plans: complaints.

Existing law provides for the licensure and regulation of health care service plans administered by the Commissioner of Corporations. Under existing law, willful violation of any of these provisions is punishable as either a felony or a misdemeanor.

Existing law requires every health care service plan regulated by the department to prominently display in every plan contract, on enrollee and subscriber evidence of coverage forms, on complaint forms, and on all written responses to grievances and complaints, a notice of the right to submit unresolved grievances and complaints to the department for review.

This bill would repeal this requirement.

Existing law requires the commissioner to establish and maintain a toll-free telephone number for the purpose of receiving complaints regarding health care service plans regulated by the commissioner, and requires every health care service plan to publish the toll-free number on every new plan contract, on every evidence of coverage, on copies of plan grievance procedures, on plan complaint forms, and on all written notices to enrollees required under the grievance process of the plan.

This bill would require every health care service plan, commencing July 1, 1999, to publish the Internet address of the Department of Corporations and the plan's telephone number, as well as the California Relay Service's toll-free telephone numbers for the hearing and speech impaired, on every plan contract, on every evidence of coverage, on copies of plan grievance procedures, on plan complaint forms, and on all written



notices to enrollees required under the grievance process of the plan.

The bill, in addition, would revise the statement containing information on the toll-free telephone number required to be published by a health care service plan regarding complaints to include the California Relay Service's toll-free telephone numbers for the hearing and speech impaired and the department's Internet address, among other things.

Since a willful violation of the provisions applicable to health care service plans is a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 1368 of the Health and Safety Code is amended to read:

1368. (a) Every plan shall do all of the following:

(1) Establish and maintain a grievance system approved by the department under which enrollees may submit their grievances to the plan. Each system shall provide reasonable procedures in accordance with department regulations that shall ensure adequate consideration of enrollee grievances and rectification when appropriate.

(2) Inform its subscribers and enrollees upon enrollment in the plan and annually thereafter of the procedure for processing and resolving grievances. The information shall include the location and telephone number where grievances may be submitted.

(3) Provide forms for complaints to be given to subscribers and enrollees who wish to register written complaints. The forms used by plans licensed pursuant to



Section 1353 shall be approved by the commissioner in advance as to format.

(4) Keep in its files all copies of complaints, and the responses thereto, for a period of five years.

(b) (1) (A) After either completing the grievance process described in subdivision (a), or participating in the process for at least 60 days, a subscriber or enrollee may submit the grievance or complaint to the department for review. In any case determined by the department to be a case involving an imminent and serious threat to the health of the patient, including, but not limited to, the potential loss of life, limb, or major bodily function, or in any other case where the department determines that an earlier review is warranted, a subscriber or enrollee shall not be required to complete the grievance process or participate in the process for at least 60 days.

(B) A grievance or complaint may be submitted to the department for review and resolution prior to any arbitration.

(C) Notwithstanding subparagraphs (A) and (B), the department may refer any grievance or complaint to the State Department of Health Services, the Department of Aging, the federal Health Care Financing Administration, or any other appropriate governmental entity for investigation and resolution.

(2) If the subscriber or enrollee is a minor, or is incompetent or incapacitated, the parent, guardian, conservator, relative, or other designee of the subscriber or enrollee, as appropriate, may submit the grievance or complaint to the department as the agent of the subscriber or enrollee. Further, a provider may join with, or otherwise assist, a subscriber or enrollee, or the agent, to submit the grievance or complaint to the department. In addition, following submission of the grievance or complaint to the department, the subscriber or enrollee, or the agent, may authorize the provider to assist, including advocating on behalf of the subscriber or enrollee. For purposes of this section, a “relative” includes the parent, stepparent, spouse, adult son or



daughter, grandparent, brother, sister, uncle, or aunt of the subscriber or enrollee.

(3) The department shall review the written documents submitted with the subscriber's or the enrollee's request for review, or submitted by the agent on behalf of the subscriber or enrollee. The department may ask for additional information, and may hold an informal meeting with the involved parties, including providers who have joined in submitting the grievance or complaint, or who are otherwise assisting or advocating on behalf of the subscriber or enrollee. The department shall send a written notice of the final disposition of the grievance or complaint, and the reasons therefor, to the subscriber or enrollee, the agent, to any provider that has joined with or is otherwise assisting the subscriber or enrollee, and to the plan, within 60 calendar days of receipt of the request for review unless the commissioner, in his or her discretion, determines that additional time is reasonably necessary to fully and fairly evaluate the relevant grievance or complaint. Distribution of the written notice shall not be deemed a waiver of any exemption or privilege under existing law, including, but not limited to, Section 6254.5 of the Government Code, for any information in connection with and including the written notice, nor shall any person employed or in any way retained by the department be required to testify as to that information or notice. On or before January 1, 1997, the commissioner shall establish and maintain a system of aging of complaints that are pending and unresolved for 60 days or more, that shall include a brief explanation of the reasons each complaint is pending and unresolved for 60 days or more.

(4) A subscriber or enrollee, or the agent acting on behalf of a subscriber or enrollee, may also request voluntary mediation with the plan prior to exercising the right to submit a grievance or complaint to the department. The use of mediation services shall not preclude the right to submit a grievance or complaint to the department upon completion of mediation. In order to initiate mediation, the subscriber or enrollee, or the



agent acting on behalf of the subscriber or enrollee, and the plan shall voluntarily agree to mediation. Expenses for mediation shall be borne equally by both sides. The department shall have no administrative or enforcement responsibilities in connection with the voluntary mediation process authorized by this paragraph.

(c) The plan's grievance system shall include a system of aging of complaints that are pending and unresolved for 30 days or more. On or before January 1, 1997, the plan shall provide a quarterly report to the commissioner of complaints pending and unresolved for 30 or more days with separate categories of complaints for Medicare enrollees and Medi-Cal enrollees. The plan shall include with the report a brief explanation of the reasons each complaint is pending and unresolved for 30 days or more. The plan may include the following statement in the quarterly report that is made available to the public by the commissioner:

“Under Medicare and Medi-Cal law, Medicare enrollees and Medi-Cal enrollees each have separate avenues of appeal that are not available to other enrollees. Therefore, complaints pending and unresolved may reflect enrollees pursuing their Medicare or Medi-Cal appeal rights.”

If requested by a plan, the commissioner shall include this statement in a written report made available to the public and prepared by the commissioner that describes or compares complaints that are pending and unresolved with the plan for 30 days or more. Additionally, the commissioner shall, if requested by a plan, append to that written report a brief explanation, provided in writing by the plan, of the reasons why complaints described in that written report are pending and unresolved for 30 days or more. The commissioner shall not be required to include a statement or append a brief explanation to a written report that the commissioner is required to prepare under this chapter, including Sections 1380 and 1397.5.



(d) Subject to subparagraph (C) of paragraph (1) of subdivision (b), the grievance, complaint, or resolution procedures authorized by this section shall be in addition to any other procedures that may be available to any person, and failure to pursue, exhaust, or engage in the procedures described in this section shall not preclude the use of any other remedy provided by law.

(e) Nothing in this section shall be construed to allow the submission to the department of any provider complaint or grievance under this section. However, as part of a provider's duty to advocate for medically appropriate health care for his or her patients pursuant to Sections 510 and 2056 of the Business and Professions Code, nothing in this subdivision shall be construed to prohibit a provider from contacting and informing the department about any concerns he or she has regarding compliance with or enforcement of this chapter.

SEC. 2. Section 1368.02 of the Health and Safety Code is amended to read:

1368.02. (a) The commissioner shall establish and maintain a toll-free telephone number for the purpose of receiving complaints regarding health care service plans regulated by the commissioner.

(b) Every health care service plan shall publish the toll-free number required by this section on every new plan contract, on every evidence of coverage, on copies of plan grievance procedures, on plan complaint forms, and on all written notices to enrollees required under the grievance process of the plan. The toll-free number shall be displayed by the plan in each of these documents in 12-point boldface type in the following regular type statement:

“The California Department of Corporations is responsible for regulating health care service plans. The department has a toll-free telephone number [1-800-telephone number] to receive complaints regarding health plans. If you have a grievance against the health plan, you should contact the plan and use the plan's grievance process. If you need the department's



help with a complaint involving an emergency grievance or with a grievance that has not been satisfactorily resolved by the plan, you may call the department's toll-free telephone number."

(c) If the plan's revised evidence of coverage is not published and distributed to all enrollees on or before April 1, 1996, the plan shall provide all enrollees with the statement specified in subdivision (b) by April 1, 1996, in a written notification document dealing solely with the grievance process. Each plan's revised evidence of coverage shall include the statement specified in subdivision (b) no later than January 1, 1997.

(d) The commissioner shall designate an ombudsperson. The duties of the ombudsperson shall be determined by the commissioner. The commissioner may designate a member of the existing staff to serve as the ombudsperson.

(e) This section shall become inoperative on July 1, 1999, and, as of January 1, 2000, is repealed, unless a later enacted statute that is enacted before January 1, 2000, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 1368.02 is added to the Health and Safety Code, to read:

1368.02. (a) The commissioner shall establish and maintain a toll-free telephone number for the purpose of receiving complaints regarding health care service plans regulated by the commissioner.

(b) Every health care service plan shall publish the department's toll-free telephone number, the California Relay Service's toll-free telephone numbers for the hearing and speech impaired, the plan's telephone number, and the department's Internet address, on every plan contract, on every evidence of coverage, on copies of plan grievance procedures, on plan complaint forms, and on all written notices to enrollees required under the grievance process of the plan, including any written communications to an enrollee that offer the enrollee the opportunity to participate in the grievance process of the



plan and on all written responses to grievances. The department's telephone number, the California Relay Service's telephone numbers, the plan's telephone number, and the department's Internet address shall be displayed by the plan in each of these documents in 12-point boldface type in the following regular type statement:

“The California Department of Corporations is responsible for regulating health care service plans. The department's Health Plan Division has a toll-free telephone number (1-800-400-0815) to receive complaints regarding health plans. The hearing and speech impaired may use the California Relay Service's toll-free telephone numbers (1-800-735-2929 (TTY) or 1-888-877-5378 (TTY)) to contact the department. The department's Internet website (<http://www.corp.ca.gov>) has complaint forms and instructions online. If you have a grievance against your health plan, you should first telephone your plan at [plan's telephone number] and use the plan's grievance process before contacting the Health Plan Division. If you need help with a grievance involving an emergency, a grievance that has not been satisfactorily resolved by your plan, or a grievance that has remained unresolved for more than 60 days, you may call the Health Plan Division for assistance. The plan's grievance process and the Health Plan Division's complaint review process are in addition to any other dispute resolution procedures that may be available to you, and your failure to use these processes does not preclude your use of any other remedy provided by law.”

(c) The commissioner shall designate an ombudsperson. The duties of the ombudsperson shall be determined by the commissioner. The commissioner may designate a member of the existing staff to serve as the ombudsperson.

(d) This section shall become operative on July 1, 1999.



SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.



Approved _____, 1998

Governor

